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## Senate

(Legislative day of Monday, September 12, 1994)

### THE TELECOMMUNICATIONS CARRIER'S DUTY ACT OF 1994

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 694, S. 2375, a bill relating to a telecommunications carrier's duty to assist law enforcement.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2375) to amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

#### SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COMMUNICATIONS.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 119 the following new chapter:

#### CHAPTER 120—TELECOMMUNICATIONS CARRIER ASSISTANCE TO THE GOVERNMENT

Sec.

"2601. Definitions.

"2602. Assistance capability requirements.

"2603. Notices of capacity requirements.

"2604. Systems security and integrity.

"2605. Cooperation of equipment manufacturers and providers of telecommunications support services.

"2606. Technical requirements and standards; extension of compliance date.

"2607. Enforcement orders.

"2608. Payment of costs of telecommunications carriers.

#### "2601. Definitions

"(a) DEFINITIONS.—In this chapter—

"the terms defined in section 2510 have, respectively, the meanings stated in that section.

"call-identifying information"

"(A) means all dialing or signalling information that identifies the origin, direction, destination, or termination of each communication generated or received by the subscriber equipment, facility, or service of a telecommunications carrier that is the subject of a court order or lawful authorization; but

"(B) does not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number).

"Commission" means the Federal Communications Commission.

"government" means the government of the United States and any agency or instrumentality thereof, the District of Columbia, any commonwealth, territory, or possession of the United States, and any State or political subdivision thereof authorized by law to conduct electronic surveillance.

"information services"—

"(A) means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications; and

"(B) includes electronic publishing and electronic messaging services; but

"(C) does not include any capability for a telecommunications carrier's internal management, control, or operation of its telecommunications network.

"telecommunications support services" means a product, software, or service used by a telecommunications carrier for the internal signaling or switching functions of its telecommunications network.

"telecommunications carrier"—

"(A) means a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire (within the meaning of section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)));

"(B) includes—

"(i) a person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d))); or

"(ii) a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of this chapter; but

"(C) does not include persons or entities insofar as they are engaged in providing information services.

#### "2602. Assistance capability requirements

"(a) CAPABILITY REQUIREMENTS.—Except as provided in subsections (b), (c), and (d) of this section, and subject to section 2607(c), a telecommunications carrier shall ensure that its services or facilities that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

"(1) expeditiously isolating and enabling the government to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's service, facility, or equipment or at such later time as may be acceptable to the government;

"(2) expeditiously isolating and enabling the government to access call-identifying information that is reasonably available to the carrier—

"(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

"(B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

"(3) delivering intercepted communications and call-identifying information to the government in a format such that they may be transmitted by means of facilities or services procured by the government to a location other than the premises of the carrier; and

"(4) facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

"(A) the privacy and security of communications and call-identifying information not authorized to be intercepted; and

"(B) information regarding the government's interception of communications and access to call-identifying information.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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“(b) LIMITATIONS.—

“(1) DESIGN OF FEATURES AND SYSTEMS CONFIGURATIONS.—This chapter does not authorize any law enforcement agency or officer—

“(A) to require any specific design of features or system configurations to be adopted by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services; or

“(B) to prohibit the adoption of any feature or service by providers of wire or electronic communication service, manufacturers of telecommunications equipment, or providers of telecommunications support services.

“(2) INFORMATION SERVICES; PRIVATE NETWORKS AND INTERCONNECTION SERVICES AND FACILITIES.—The requirements of subsection (a) do not apply to—

“(A) information services; or

“(B) services or facilities that support the transport or switching of communications for private networks or for the sole purpose of interconnecting telecommunications carriers.

“(3) ENCRYPTION.—A telecommunications carrier shall not be responsible for decrypting, or ensuring the government's ability to decrypt, any communication encrypted by a subscriber or customer, unless the encryption was provided by the carrier and the carrier possesses the information necessary to decrypt the communication.

“(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In emergency or exigent circumstances (including those described in sections 2518 (7) or (11)(b) and 3125 of this title and section 1805(e) of title 50), a carrier at its discretion may fulfill its responsibilities under subsection (a)(3) by allowing monitoring at its premises if that is the only means of accomplishing the interception or access.

“(d) MOBILE SERVICE ASSISTANCE REQUIREMENTS.—A telecommunications carrier offering a feature or service that allows subscribers to redirect, hand off, or assign their wire or electronic communications to another service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of wire or electronic communication service that has acquired access to the communications.

“§2603. Notices of capacity requirements

“(a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY REQUIREMENTS.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this chapter, after consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment and after notice and comment, the Attorney General shall publish in the Federal Register and provide to appropriate telecommunications carrier associations, standard-setting organizations, and for a—

“(A) notice of the maximum capacity required to accommodate all of the communication interceptions, pen registers, and trap and trace devices that the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously; and

“(B) notice of the number of communication interceptions, pen registers, and trap and trace devices, representing a portion of the maximum capacity set forth under subparagraph (A), that

the Attorney General estimates that government agencies authorized to conduct electronic surveillance may conduct and use simultaneously after the date that is 4 years after the date of enactment of this chapter.

“(2) BASIS OF NOTICES.—The notices issued under paragraph (1) may be based upon the type of equipment, type of service, number of subscribers, geographic location, or other measure.

“(b) COMPLIANCE WITH CAPACITY NOTICES.—

“(1) INITIAL CAPACITY.—Within 3 years after the publication by the Attorney General of a notice of capacity requirements or within 4 years after the date of enactment of this chapter, whichever is longer, a telecommunications carrier shall ensure that its systems are capable of—

“(A) expanding to the maximum capacity set forth in the notice under subsection (a)(1)(A); and

“(B) accommodating simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the notice under subsection (a)(1)(B).

“(2) EXPANSION TO MAXIMUM CAPACITY.—After the date described in paragraph (1), a telecommunications carrier shall ensure that it can accommodate expeditiously any increase in the number of communication interceptions, pen registers, and trap and trace devices that authorized agencies may seek to conduct and use, up to the maximum capacity requirement set forth in the notice under subsection (a)(1)(A).

“(c) NOTICES OF INCREASED MAXIMUM CAPACITY REQUIREMENTS.—

“(1) The Attorney General shall periodically provide to telecommunications carriers written notice of any necessary increases in the maximum capacity requirement set forth in the notice under subsection (a)(1)(A).

“(2) Within 3 years after receiving written notice of increased capacity requirements under paragraph (1), or within such longer time period as the Attorney General may specify, a telecommunications carrier shall ensure that its systems are capable of expanding to the increased maximum capacity set forth in the notice.

“§2604. Systems security and integrity

“A telecommunications carrier shall ensure that any court ordered or lawfully authorized interception of communications or access to call-identifying information effected within its switching premises can be activated only with the affirmative intervention of an individual officer or employee of the carrier.

“§2605. Cooperation of equipment manufacturers and providers of telecommunications support services

“(a) CONSULTATION.—A telecommunications carrier shall consult, as necessary, in a timely fashion with manufacturers of its telecommunications transmission and switching equipment and its providers of telecommunications support services for the purpose of identifying any service or equipment, including hardware and software, that may require modification so as to permit compliance with this chapter.

“(b) MODIFICATION OF EQUIPMENT AND SERVICES.—Subject to section 2607(c), a manufacturer of telecommunications transmission or switching equipment and a provider of telecommunications support services shall, on a reasonably timely basis and at a reasonable charge, make available to the telecommunications carriers using its equipment or services such modifications as are necessary to permit such carriers to comply with this chapter.

“§2606. Technical requirements and standards; extension of compliance date

“(a) SAFE HARBOR.—

“(1) CONSULTATION.—To ensure the efficient and industry-wide implementation of the assistance capability requirements under section 2602, the Attorney General, in coordination with other Federal, State, and local law enforcement

agencies, shall consult with appropriate associations and standard-setting organizations of the telecommunications industry and with representatives of users of telecommunications services and facilities.

“(2) COMPLIANCE UNDER ACCEPTED STANDARDS.—A telecommunications carrier shall be found to be in compliance with the assistance capability requirements under section 2602, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 2605, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization or by the Commission under subsection (b) to meet the requirements of section 2602.

“(3) ABSENCE OF STANDARDS.—The absence of technical requirements or standards for implementing the assistance capability requirements of section 2602 shall not—

“(A) preclude a carrier, manufacturer, or services provider from deploying a technology or service; or

“(B) relieve a carrier, manufacturer, or service provider of the obligations imposed by section 2602 or 2605, as applicable.

“(b) FCC AUTHORITY.—

“(1) IN GENERAL.—If industry associations or standard-setting organizations fail to issue technical requirements or standards or if a government agency or any other person believes that such requirements or standards are deficient, the agency or person may petition the Commission to establish, by notice and comment rule-making or such other proceedings as the Commission may be authorized to conduct, technical requirements or standards that—

“(A) meet the assistance capability requirements of section 2602;

“(B) protect the privacy and security of communications not authorized to be intercepted; and

“(C) serve the policy of the United States to encourage the provision of new technologies and services to the public.

“(2) TRANSITION PERIOD.—If an industry technical requirement or standard is set aside or supplanted as a result of Commission action under this section, the Commission, after consultation with the Attorney General, shall establish a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under section 2602 during any transition period.

“(c) EXTENSION OF COMPLIANCE DATE FOR FEATURES AND SERVICES.—

“(1) PETITION.—A telecommunications carrier proposing to deploy, or having deployed, a feature or service within 4 years after the date of enactment of this chapter may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section 2602.

“(2) GROUND FOR EXTENSION.—The Commission may, after affording a full opportunity for hearing and after consultation with the Attorney General, grant an extension under this paragraph, if the Commission determines that compliance with the assistance capability requirements under section 2602 is not reasonably achievable through application of technology available within the compliance period.

“(3) LENGTH OF EXTENSION.—An extension under this paragraph shall extend for no longer than the earlier of—

“(A) the date determined by the Commission as necessary for the carrier to comply with the assistance capability requirements under section 2602; or

“(B) the date that is 2 years after the date on which the extension is granted.

“(4) APPLICABILITY OF EXTENSION.—An extension under this subsection shall apply to only

that part of the carrier's business on which the new feature or service is used.

#### §2607. Enforcement orders

**"(a) ENFORCEMENT BY COURT ISSUING SURVEILLANCE ORDER.**—If a court authorizing an interception under chapter 119, a State statute, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or authorizing use of a pen register or a trap and trace device under chapter 206 or a State statute finds that a telecommunications carrier has failed to comply with the requirements in this chapter, the court may direct that the carrier comply forthwith and may direct that a provider of support services to the carrier or the manufacturer of the carrier's transmission or switching equipment furnish forthwith modifications necessary for the carrier to comply.

**"(b) ENFORCEMENT UPON APPLICATION BY ATTORNEY GENERAL.**—The Attorney General may apply to the appropriate United States district court for, and the United States district courts shall have jurisdiction to issue, an order directing that a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services comply with this chapter.

**"(c) GROUNDS FOR ISSUANCE.**—A court shall issue an order under subsection (a) or (b) only if the court finds that—

**"(1)** alternative technologies or capabilities or the facilities of another carrier are not reasonably available to law enforcement for implementing the interception of communications or access to call-identifying information; and

**"(2)** compliance with the requirements of this chapter is reasonably achievable through the application of available technology to the feature or service at issue or would have been reasonably achievable if timely action had been taken.

**"(d) TIME FOR COMPLIANCE.**—Upon issuance of an enforcement order under this section, the court shall specify a reasonable time and conditions for complying with its order, considering the good faith efforts to comply in a timely manner, any effect on the carrier's, manufacturer's, or service provider's ability to continue to do business, the degree of culpability or delay in undertaking efforts to comply, and such other matters as justice may require.

**"(e) LIMITATION.**—An order under this section may not require a telecommunications carrier to meet the government's demand for interception of communications and acquisition of call-identifying information to any extent in excess of the capacity for which notice has been provided under section 2603.

#### "(f) CIVIL PENALTY.

**"(1) IN GENERAL.**—A court issuing an order under this section against a telecommunications carrier, a manufacturer of telecommunications transmission or switching equipment, or a provider of telecommunications support services may impose a civil penalty of up to \$10,000 per day for each day in violation after the issuance of the order or after such future date as the court may specify.

**"(2) CONSIDERATIONS.**—In determining whether to impose a fine and in determining its amount, the court shall take into account—

**"(A)** the nature, circumstances, and extent of the violation;

**"(B)** the violator's ability to pay, the violator's good faith efforts to comply in a timely manner, any effect on the violator's ability to continue to do business, the degree of culpability, and the length of any delay in undertaking efforts to comply; and

**"(C)** such other matters as justice may require.

**"(3) CIVIL ACTION.**—The Attorney General may file a civil action in the appropriate United States district court to collect, and the United States district courts shall have jurisdiction to impose, such fines.

#### §2608. Payment of costs of telecommunications carriers

**"(a) EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BEFORE DATE OF ENACTMENT; CAPACITY COSTS.**—The Attorney General shall, subject to the availability of appropriations, pay telecommunications carriers for all reasonable costs directly associated with—

**"(1)** the modifications performed by carriers prior to the effective date of section 2602 or prior to the expiration of any extension granted under section 2606(c) to establish, with respect to equipment, features, and services deployed before the date of enactment of this chapter, the capabilities necessary to comply with section 2602;

**"(2)** meeting the maximum capacity requirements set forth in the notice under section 2603(a)(1)(A); and

**"(3)** expanding existing facilities to accommodate simultaneously the number of interceptions, pen registers and trap and trace devices for which notice has been provided under section 2603(a)(1)(B).

#### "(b) EQUIPMENT, FEATURES, AND SERVICES DEPLOYED ON OR AFTER DATE OF ENACTMENT.

**"(1) IN GENERAL.**—If compliance with the assistance capability requirements of section 2602 is not reasonably achievable with respect to equipment, features, or services deployed on or after the date of enactment of this chapter, the Attorney General, on application of a telecommunications carrier, may pay the telecommunications carrier reasonable costs directly associated with achieving compliance.

**"(2) CONSIDERATION.**—In determining whether compliance with the assistance capability requirements of section 2602 is reasonably achievable with respect to any equipment, feature, or service deployed the date of enactment of this chapter, consideration shall be given to the time when the equipment, feature, or service was deployed.

**"(c) ALLOCATION OF FUNDS FOR PAYMENT.**—The Attorney General shall allocate funds appropriated to carry out this chapter in accordance with law enforcement priorities determined by the Attorney General.

#### "(d) FAILURE TO MAKE PAYMENT WITH RESPECT TO EQUIPMENT, FEATURES, AND SERVICES DEPLOYED BEFORE DATE OF ENACTMENT.

**"(1) CONSIDERED TO BE IN COMPLIANCE.**—Unless the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with those requirements, provided the carrier has requested payment in accordance with procedures promulgated pursuant to subsection (e), any equipment, feature, or service of a telecommunications carrier deployed before the date of enactment of this chapter shall be considered to be in compliance with the assistance capability requirements of section 2602 unless the equipment, feature, or service is replaced or significantly upgraded or otherwise undergoes major modification.

**"(2) LIMITATION ON ORDER.**—An order under section 2607 shall not require a telecommunications carrier to modify, for the purpose of complying with the assistance capability requirements of section 2602, any equipment, feature, or service deployed before the date of enactment of this chapter unless the Attorney General has agreed to pay the telecommunications carrier for all reasonable costs directly associated with modifications necessary to bring the equipment, feature, or service into actual compliance with those requirements.

**"(e) PROCEDURES AND REGULATIONS.**—Notwithstanding any other law, the Attorney General shall, after notice and comment, establish any procedures and regulations deemed necessary to effectuate timely and cost-efficient payment to telecommunications carriers for compensable costs incurred under this chapter,

under chapters 119 and 121, and under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

**"(f) DISPUTE RESOLUTION.**—If there is a dispute between the Attorney General and a telecommunications carrier regarding the amount of reasonable costs to be paid under subsection (a), the dispute shall be resolved and the amount determined in a proceeding initiated at the Commission or by the court from which an enforcement order is sought under section 2607."

**(b) TECHNICAL AMENDMENT.**—The part analyzing for part 1 of title 18, United States Code, is amended by inserting after the item relating to chapter 119 the following new item:

**"120. Telecommunications carrier assistance to the Government ..... 2601".**

#### SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out section 2608 of title 18, United States Code, as added by section 1—

**(1)** a total of \$500,000,000 for fiscal years 1995, 1996, and 1997; and

**(2)** such sums as are necessary for each fiscal year thereafter, such sums to remain available until expended.

#### SEC. 3. EFFECTIVE DATE.

**(a) IN GENERAL.**—Except as provided in paragraph (2), chapter 120 of title 18, United States Code, as added by section 1, shall take effect on the date of enactment of this Act.

**(b) ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.**—Sections 2602 and 2604 of title 18, United States Code, as added by section 1, shall take effect on the date that is 4 years after the date of enactment of this Act.

#### SEC. 4. REPORTS.

**(a) REPORTS BY THE ATTORNEY GENERAL.**—

**(1) IN GENERAL.**—On or before November 30, 1995, and on or before November 30 of each year for 5 years thereafter, the Attorney General shall submit to Congress and make available to the public a report on the amounts paid during the preceding fiscal year in payment to telecommunications carriers under section 2608 of title 18, United States Code, as added by section 1.

**(2) CONTENTS.**—A report under paragraph (1) shall include—

**(A)** a detailed accounting of the amounts paid to each carrier and the technology, equipment, feature or service for which the amounts were paid; and

**(B)** projections of the amounts expected to be paid in the current fiscal year, the carriers to which payment is expected to be made, and the technologies, equipment, features or services for which payment is expected to be made.

**(b) REPORTS BY THE COMPTROLLER GENERAL.**—

**(1) PAYMENTS FOR MODIFICATIONS.**—On or before April 1, 1996, and April 1, 1998, the Comptroller General of the United States, after consultation with the Attorney General and the telecommunications industry, shall submit to the Congress a report reflecting its analysis of the reasonableness and cost-effectiveness of the payments made by the Attorney General to telecommunications carriers for modifications necessary to ensure compliance with chapter 120 of title 18, United States Code, as added by section 1.

**(2) COMPLIANCE COST ESTIMATES.**—A report under paragraph (1) shall include the findings and conclusions of the Comptroller General on the costs to be incurred after the compliance date, including projections of the amounts expected to be incurred and the technologies, equipment, features or services for which expenses are expected to be incurred by telecommunications carriers to comply with the assistance capability requirements in the first 5 years after the effective date of section 2602.

#### SEC. 5. CORDLESS TELEPHONES.

**(a) DEFINITIONS.**—Section 2510 of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "but such term does not include" and all that follows through "base unit"; and

(2) in paragraph (12) by striking subparagraph (A) and redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively.

(b) **PENALTY.**—Section 2511 of title 18, United States Code, is amended—

(1) in subsection (4)(b)(i) by inserting "a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit," after "cellular telephone communication,"; and

(2) in subsection (4)(b)(ii) by inserting "a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit," after "cellular telephone communication,".

#### SEC. 6. RADIO-BASED DATA COMMUNICATIONS.

Section 2510(16) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (D);

(2) by inserting "or" at the end of subparagraph (E); and

(3) by inserting after subparagraph (E) the following new subparagraph:

"(F) an electronic communication;"

#### SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICATIONS THAT ARE TRANSMITTED USING MODULATION TECHNIQUES WITH NONPUBLIC PARAMETERS.

Section 2511(4)(b) of title 18, United States Code, is amended by striking "or encrypted, then" and inserting "encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication".

#### SEC. 8. TECHNICAL CORRECTION.

Section 2511(2)(a)(i) of title 18, United States Code, is amended by striking "used in the transmission of a wire communication" and inserting "used in the transmission of a wire or electronic communication".

#### SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MOBILE RADIO INSTRUMENTS.

(a) **OFFENSE.**—Section 1029(a) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (3); and

(2) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications services; or

"(6) knowingly and with intent to defraud uses, produces, traffics in, has control or custody of, or possesses—

"(A) a scanning receiver; or

"(B) hardware or software used for altering or modifying telecommunications instruments to obtain unauthorized access to telecommunications services."

(b) **PENALTY.**—Section 1029(c)(2) of title 18, United States Code, is amended by striking "(a)(1) or (a)(4)" and inserting "(a) (1), (4), (5), or (6)".

(c) **DEFINITIONS.**—Section 1029(e) of title 18, United States Code, is amended—

(1) in paragraph (1) by inserting "electronic serial number, mobile identification number, personal identification number, or other telecommunications service, equipment, or instrument identifier," after "account number";

(2) by striking "and" at the end of paragraph (5);

(3) by striking the period at the end of paragraph (6) and inserting "and"; and

(4) by adding at the end the following new paragraph:

"(7) the term 'scanning receiver' means a device or apparatus that can be used to intercept

a wire or electronic communication in violation of chapter 119."

#### SEC. 10. TRANSACTIONAL DATA.

(a) **DISCLOSURE OF RECORDS.**—Section 2703 of title 18, United States Code, is amended—

(1) in subsection (c)(1)—

(A) in subparagraph (B)—

(i) by striking clause (i); and

(ii) by redesignating clauses (ii), (iii), and (iv)

as clauses (i), (ii), and (iii), respectively; and

(B) by adding at the end the following new subparagraph:

"(C) A provider of electronic communication service or remote computing service shall disclose to a governmental entity the name, address, telephone toll billing records, and length of service of a subscriber to or customer of such service and the types of services the subscriber or customer utilized, when the governmental entity uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury or trial subpoena or any means available under subparagraph (B)."; and

(2) by amending the first sentence of subsection (d) to read as follows: "A court order for disclosure under subsection (b) or (c) may be issued by any court that is a court of competent jurisdiction described in section 3126(2)(A) and shall issue only if the governmental entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation."

(b) **PEN REGISTERS AND TRAP AND TRACE DEVICES.**—Section 3121 of title 18, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

"(c) **LIMITATION.**—A government agency authorized to install and use a pen register under this chapter or under State law, shall use technology reasonably available to it that restricts the recording or decoding of electronic or other impulses to the dialing and signalling information utilized in call processing."

Mr. BREAUX. Mr. President, I ask unanimous consent that the committee substitute be agreed to, that the bill be read a third time, passed, the motion to reconsider be tabled and any statements appear at the appropriate place in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

So the bill (S. 2375), as amended, was deemed read for a third time and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

#### LAND SALE BY THE UNIVERSITY OF ARKANSAS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2550, relating to a land sale by the University of Arkansas, introduced earlier today by Senator PRYOR, that the bill be read three times, passed, and the motion to reconsider be laid upon the table, and that any statements relating to this item be placed in the RECORD as if read in the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 2550) was deemed read three times and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

#### STATE DEPARTMENT AUTHORIZATION TECHNICAL CORRECTIONS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5034, the State Department authorization technical corrections bill just received from the House, that the bill be deemed read a third time and passed; the motion to reconsider laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5034) was deemed read a third time and passed.

#### INTERNATIONAL NARCOTICS CONTROL CORRECTIONS

Mr. BREAUX. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5030, the international narcotics control corrections bill, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5030) to amend the Foreign Assistance Act of 1961 to make corrections relating to international narcotics control activities, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

#### AMENDMENT NO. 2639

(Purpose: To add provisions relating to the membership of the North Atlantic Treaty Organization [NATO])

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator BROWN, and I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] for Mr. BROWN proposes an amendment number 2639.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

So the amendment (No. 2639) was agreed to, as follows:

At the end of the bill, add the following:

TITLE—NATO PARTICIPATION ACT OF 1994

#### SEC. 01. SHORT TITLE.

This title may be cited as the "NATO Participation Act of 1994".

#### SEC. 02. SENSE OF THE CONGRESS.

It is the sense of the Congress that—

(1) the leaders of the NATO member nations are to be commended for reaffirming that NATO membership remains open to Partnership for Peace countries emerging from communist domination and for welcoming eventual expansion of NATO to include such countries;